

Docket No.: SS-102U
Patent Appl.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

App. No.:	10/765,692)	Examiner: Olson, M.
)	
Title:	PERSONAL LOAD BEARING DEVICE)	Art Unit: 3727
)	
Inventor:	Liesko, A.)	
)	
Filed:	1/26/04)	
)	

REQUEST FOR CONTINUED EXAMINATION

COMMISSIONER FOR PATENTS
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I. The Examiner's Objection and Rejections

On September 8, 2007, the Examiner mailed an office action finally rejecting Claims 1, 2 and 4 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent no. 4,211,219 issued to Alvey ("Alvey") in view of U.S. Patent no. 5,826,763 issued to Roberts ("Roberts"). The Examiner further rejected Claim 3 under 35 U.S.C. § 103(a) as being unpatentable over Alvey in view of Roberts in further view of U.S. Patent no. 5,511,707 issued to Reichert ("Reichert"). Finally, the Examiner rejected Claims 5 and 6 under 35 U.S.C. § 103(a) as being unpatentable over Alvey in view of Roberts in further view of U.S. Patent no. 4,901,898 ("Colombo").

II. Applicant's Response

A. The Alvey Reference

Once again, Applicant directs the Examiner's attention to the Alvey reference and submits that Alvey is intended primarily be a support for the elbows. Support can be found throughout the Specification in Alvey where it is stated that the device is to "become an extension of the pelvic girdle to support the weights by means of the elbow . . ." (Alvey, col. 1, lns. 63-67). Alvey continues by stating that the invention "serves as a rest for each elbow." (Alvey, col. 1, lns. 4-7). "Each brace member 56 is rather thick or wide so as to serve as a rest for the elbow 40 when heavy weights are being lifted or carried about." (Alvey, col., lns. 55-62). As shown in FIG. 2 provides the best representation of how the invention according to Alvey is utilized. As shown in phantom lines, the elbows rest upon the surface 62 in an inward manner. As further shown in FIG. 4, the invention made according to Alvey may be directly strapped to the elbow. (Alvey, FIG. 4). This is significant because as can be seen in Figure 4, the top surface 62 is shown as being substantially planar and flush with the elbow. While the device in Alvey appears to be intended for use with belts, Figure 4 demonstrates that it is also an objective of the invention to make it compatible with the elbow directly. Therefore, Applicant submits that the top surface 62 is to be substantially planar and/or shaped in a manner so as to accommodate a user's elbow thereupon.

The Examiner believes that it would be obvious to modify the Alvey reference according to the Roberts reference to lower the cargo support member below the uppermost superior aspect of the vertical member. Applicant does not believe that there is any motivation to combine the Roberts reference with the Alvey reference. Even assuming *arguendo*, Applicant submits that the

combination of both references would not produce a device with an upper concavely curved surface extending from the vertical member to the cargo support member and terminating at a lip on the distal end thereof. Indeed, Applicant submits that forming such a concavely curved surface would destroy an object of the Alvey reference and/or render one of the primary intended uses of the device described in the Alvey reference useless. This is because forming such a concavely extending surface thereon would make it almost impossible for the user to rest their elbow upon the surface as shown in FIG. 4 of Alvey. The device in Alvey is intended to be used such that the elbows are specifically supported lengthwise across the top surface 62. This is also shown in FIG. 2, which illustrates the intended positioning of the elbows. Applicant submits that any other use of the device in a different manner is not described by the Alvey reference and that any such assumptions would be merely an exercise in hypothetical experimentation without any technical support.

If a proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to the make proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). A reference is deemed “teach away” when “a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a divergent from the path that was taken by the applicant.” *In re Gurvey*, 27 F.3d 553, 31 USPQ 2d 1130, 1131 (Fed. Cir. 1994).

Applicant further believes that the upper concavely extending surface is not disclosed in any of the references cited by the Examiner, especially since none of those references integrate the use of a lip at the terminating point thereof.

Therefore, Applicant respectfully submits that the claims, as amended, not obvious over Alvey in view of Roberts. In the respect that Independent claim 1 is believed to be allowable, its dependent claims are also believed to be allowable.

Respectfully submitted,

DATED: 4/8/07

A handwritten signature in black ink, appearing to be 'Stephen T. Bang', with a long horizontal stroke extending to the right.

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